IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 5886 of 2005

Between:

K. Mallikarjuna Rao, S/o K. Satyanarayana,
Podagattalapalli Village, Ravulapalem Mandal,
East Godavari District.

.....PETITIONER

AND

1 State of Andhra Pradesh, rep. by its Principal Secretary to the Government , Industries and Commerce Department, Secretariat , Saifabad, Hyderabad.
2 The District Level Committee (Sand Auction), rep . by its Member Convenor,, East Godavari District, Kakinada, District Panchayat Officer, Kakinada.
3 The District Collector and Magistrate, East Godavari , Kakinada.
4 The Executive Engineer, Godavari Head Works Division, Dowlaiswaram, East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, more particularly one in the nature of Writ of Mandamus : a) direct the respondents to consider and dispose of the representations submitted by the writ petitioner on 22-1-2005 and 7-2-2005 duly taking into account the report submitted by the River Conservator (Respondent No. 4) through his Lr.No. AB/A5/No. 416 M dated 18-3-2005, in the matter of granting reduction/remission in the scenarage fee and lease amount payable for package No. 3 of Gowthami River, in view of the unworkable nature of the

leasehold area representing Komarajulanka and Merlapalem Villages, b) Direct the respondents to refrain from taking any coercive steps against the writ petitioner by way of preventing him from quarrying sand from the leasehold areas of Ravulapalem and Ubalanka reaches forming part of package No. 3 of Gowthami River and pass such other order or orders as this Hon'ble Court may deems fit and proper in the circumstances of the case

Counsel for the Petitioner: MR.NUTY RAM MOHAN RAO

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following:

ORDER:

Petitioner, who participated in the sand quarry auction notified on 14.09.2004, and held on 30.09.2004 for package No.3 in the said notification, filed this petition alleging that inasmuch as two, out of four, reaches, for which he participated in the auction became unreachable, he submitted applications on 22.01.2005 and 07.02.2005, seeking concession in payment of the last instalment, as the Executive Engineer, Godavari, Head works Division, also had, after inspecting the two Reaches, reported to the District Panchayat Officer that those two, out of the four Reaches in respect of which he participated in the bid, are not conducive for procuring the sand, respondents may be directed to pass appropriate orders on his applications dated 22.01.2005 and 07.02.2005, keeping in view the remarks of the Executive

Engineer, Dowlaiswaram.

2. The contention of the learned Counsel for the petitioner is that since two out of the four reaches in respect of which petitioner had participated in the auction and became the highest bidder, have become unreachable, and that that is so would evident from the report of the Executive Engineer, petitioner made applications for reduction of the last instalment due and payable by him, but the respondents without passing any orders thereon, are insisting on the petitioner paying the last instalment before 31.03.2005 even though, the same is payable only on or before 31.05.2005 as per the agreement, and so the respondents may be directed to dispose of the applications of the petitioner for reduction of the lease amount, before their insisting on the petitioner paying the last instalment due.

3. The contentions of the learned Government Pleader is that since petitioner who earlier filed W.P.No. 2961 of 2005 questioning the notice dated 25.12.2004, had agreed to pay last instalment due, cannot now be heard to say that there should be a reduction in the last instalment payable by him, and since he failed to disclose his filing W.P.No.2961 of 2005 in this petition, it has to be taken that the petitioner did not come to Court with clean hands, and so this petition is liable to be dismissed.

4. The prayer of the petitioner is to consider and dispose of his representations dated 22.01.2005 and 07.02.2005 taking into account the report of the River Conservator (4th Respondent) in his letter dated 18.03.2005. Therefore, petitioner not making a reference to the earlier W.P.No.2961 of 2005 filed by him, which has no connection with the relief claimed in this petition, is of no consequence. As per the terms of the contract, petitioner has to pay the 4th and last instalment on or before 31.05.2005. Therefore, respondents cannot insist on the petitioner paying the 4th instalment on or before 31.03.2005. Depending on the orders to be passed on his representations, if the petitioner does not pay the last instalment, respondents can act as per the terms of the contract.

5. Therefore, the writ petition is disposed of with a direction to the 2nd respondent to dispose of the representations submitted by the petitioner dated

22.01.2005 and 07.02.2005 as expeditiously as possible, at any rate within a period of four weeks from the date of receipt of a copy of this order. It is also made clear that respondents cannot insist upon the petitioner paying the 4th instalment before 31.05.2005. No costs.

22.03.2005

MRKR

To

1 The State of Andhra Pradesh, rep. By its Principal Secretary to the Government , Industries and Commerce Department, Secretariat , Saifabad, Hyderabad.
2 The District Level Committe (Sand Auction), rep . By its Member Convenor,, East Godavari, Kakinada, Dirstrict Panchayat Officer, Kakinada.
3 The District Collector and Magistrate, East Godavari , Kakinada.
4 The Executive Engineer, Godavari Head Works Division, Dowlasiswaram, East Godavari District.

5 Two C.Cs to the Government Pleader for Panchayat Raj, High Court Buildings, Hyderabad.

6 Two C.D.copies.

*Form-NIC-OGS/WP{**RLD**}*